



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable John C. Marburger  
County Attorney, Fayette County  
La Grange, Texas

Dear Mr. Marburger:

Opinion No. 0-5025  
Re: Is attorney entitled to  
refund of jury fee when  
jury not used and jury  
fee deposited in  
County Treasury?

We acknowledge receipt of your opinion request of recent  
date and quote from same as follows:

"Some time ago an attorney made an application for a jury in two different cases and at the same time filed a jury fee with the District Clerk in each of these cases. These cases were put on the Jury Docket and a jury was summoned to appear for each of these two cases. These cases were set for trial for different dates. It so happened that criminal cases were also set for the day on which one of the civil cases was to be tried. The jury actually appeared for both the criminal cases and one of the civil cases. At the conclusion of the disposition of the criminal cases, the attorney announced that he no longer desired a jury in either of his civil cases and so the jury did not actually appear in one of the civil cases that had been set for a later date. In other words, the jury actually appeared for use in one of the civil cases, but did not appear in the other civil cases. Of course, the district clerk and the other officers involved performed the services as they were required to perform and as requested by the attorney. Immediately upon receipt of the jury fees in each of these cases, the district clerk deposited these fees with the county treasurer. The attorney has now requested the district clerk and the Commissioners' Court of Fayette County for a refund of the jury fees made by him in each of the two cases involved. Based upon the above facts, I would appreciate your opinion on the following question:

"Is the attorney entitled to a refund of this jury fee in either of these cases and if so, who would make the refund? Could the District Clerk make the refund of his own volition or would the District Judge order the refund and if so, to whom would the order be directed, or would the Commissioners' court be authorized to make the refund?"

We note with favor that you have submitted also an exhaustive collation of the pertinent statutes tending to bear on the collection and disposition of such fees, including Court Rule 220, hereinafter set out.

We believe that the only specific authority given by law for a refund of such fees is now contained in said Rule 220 of the Texas Rules of Civil Procedure, (Acts 1939, 46th Leg.), which provides as follows:

"When one party has paid the fee for a jury trial, he shall not be permitted to withdraw such cause from the jury docket without the consent of the parties adversely interested. If so permitted, the court in its discretion may by an order permit him to withdraw also his jury fee deposit."

Applying the above Rule to the fact situation presented by you, we are constrained to hold that no refund could be made under authority of same in either case as such fees have been deposited in the County Treasury by the District Clerk and the trial court no longer has any control over the disposition of same.

Trusting this satisfactorily answers your question,  
we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Robert L. Lattimore Jr.*  
Robert L. Lattimore, Jr.  
Assistant

APPROVED MAY 31, 1944

*[Signature]*  
ATTORNEY GENERAL OF TEXAS

RL:EP

